REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE AIRLINES, INC. (PAL),	**C.T.A. CASE NO. 6734**
Petitioner,	Members:
	CASTAÑEDA, JR., Chairman UY, and
-versus-	PALANCA-ENRIQUEZ, JJ.
	Promulgated:
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	OCT 13 2006

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DECISION

PALANCA-ENRIQUEZ, J.:

The elementary rule in statutory construction is that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum*. From the words of a statute there should be no departure (*Del Mar vs. Philippine Amusement and Gaming Corp., 358 SCRA 768, 781*).

THE CASE

This is a Petition for Review filed on July 24, 2003 by Philippine Airlines, Inc. (hereafter "petitioner PAL"), which seeks the refund of the amount of P1,071,375.72 representing the total amount of 7½ % and 20% final taxes deducted from its interest income from its bank deposits for the calendar year 2001.

THE FACTS

In their "Joint Stipulation of Facts and Issues", the parties stipulated as follows:

> "1. Petitioner PHILIPPINE AIRLINES, INC. (PAL) is a domestic corporation organized in accordance with the laws of the Republic of the Philippines with principal office at the 9th Floor, PAL Center, Legaspi St., Legazpi Village, Makati City, where it may be served with summons.
>
> 2. Respondent is the Commissioner of the Bureau of Internal Revenue (BIR), which is the government agency in charge of the assessment and collection of all national internal revenue taxes, fees, and charges, including the 20% final income tax on interest on currency bank deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements received by domestic corporations, as well as, the 71/2% final income tax on interest income derived by a domestic corporation from a depository bank under the expanded foreign currency deposit system, imposed under Sec. 27 (D) (1) of the National Internal Revenue Code (NIRC), with principal office at the BIR National Office Building, Agham Road,

Diliman, Quezon City, where he may be served with summons.

3. As shown by Annex "E" to the Petition for Review filed in this case, petitioner's AVP-Financial Planning & Analysis, Ma. Stella L. Diaz, filed on November 28, 2002, with the office of the respondent Commissioner of Internal Revenue, a written request for refund of the amount of PHP540,000.00 and US$9,886.06 representing the total amount of final withholding taxes erroneously withheld from the petitioner by International Exchange Bank (IEB, for brevity) and Philippine Bank of Communication (PBC, for brevity) for the year 2001. Attached to said written request are copies of the certifications issued by IEB and PBC, referred to as Annexes "A", "B", and "C" to the Petition for Review. As stated in the written request, the tax refund was being claimed by petitioner by virtue of its exemption from said tax under its franchise, Presidential Decree No. 1590, which subjects the petitioner only to either the basic corporate income tax or the 2% franchise tax, whichever of the two will result in a lower tax, in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature or description imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future.

4. Up to this date, however, respondent has no final decision on petitioner's aforesaid claim for refund."

In his answer, the Commissioner of Internal Revenue (hereafter "respondent") alleged by way of special and affirmative defenses that: petitioner's alleged claim for refund is subject to administrative routinary examination/investigation by the respondent's Bureau; petitioner failed miserably to show that the amounts of US$6,692.46 (P359,719.72),

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US$3,193.60 (P171,656.00) and P540,000.00, allegedly representing 7½% final income tax and 20% final income tax, respectively, were erroneously or illegally collected or that the same were properly documented; taxes paid and collected are presumed to have been paid in accordance with law, hence, not refundable; in an action for tax refund/credit, the taxpayer has the burden to establish its right to refund and failure to sustain the burden is fatal to the claim for refund; it is incumbent upon petitioner to show that it has complied with the provisions of *Section 204 (C)*, in relation to *Section 229 of the Tax Code*; and, well established is the rule that tax refunds/credits are construed strictly against the taxpayer as they partake of the nature of exemption from tax.

Petitioner presented Evelyn Taghap, its Manager for Tax Division, Carmencita Tan, and Emmanuel Geronimo, both of Philippine Bank of Communications, Marilyn C. Miciano of International Exchange Bank, as witnesses, and documentary evidence, marked as Exhibits "*A*" to "*MM-2*", inclusive of submarkings, which were admitted by the Court, except for *Exhibit "A-1"* for failure of the petitioner to submit said exhibit to the Court.

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On the other hand, at the hearing on May 17, 2006, counsel for respondent manifested that he is submitting the case for decision without presenting any evidence and moved for thirty (30) days within which to file his memorandum, which the Court granted.

Thus, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from notice. Only the petitioner has complied thereto and the case was deemed submitted for decision on July 5, 2006.

ISSUES

Stipulated Issues

As stipulated upon by the parties, the following are the issues for the consideration of this Court:

I

> WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OF THE 20% AND 7½% FINAL TAX PRAYED FOR, AMOUNTING TO PHP1,071,375.72.

II

> WHETHER OR NOT PETITIONER EARNED INTEREST INCOME ON ITS DEPOSITS ON JUNE 4, SEPTEMBER 4, AND OCTOBER 4, ALL IN THE YEAR 2001.

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III

WHETHER OR NOT FINAL WITHHOLDING TAXES WERE IMPOSED AND COLLECTED ON THE ALLEGED INTEREST INCOME OF PETITIONER.

IV

WHETHER OR NOT PETITIONER COMPLIED WITH THE PROVISIONS OF SECTIONS 204 (C) AND 229 OF THE TAX CODE ON THE PRESCRIPTIVE PERIOD FOR CLAIMING TAX REFUND/CREDIT.

Principal Issue to Resolve

The principal issue for this Court's resolution is whether or not petitioner is entitled to the refund of the 7½% and 20% final taxes deducted from its interest income from its bank deposits for the calendar year 2001 amounting to P1,071,375.72.

Petitioner's Arguments

Petitioner argues that it is exempt from final tax on bank deposits by virtue of its franchise, *P.D. 1590*. Under *Section 13 of P.D. 1590*, it is liable only to either the basic corporate income tax based on its annual net taxable income, or the 2% franchise tax based on gross revenue, whichever is lower. It further maintains that under *Section 13* of its franchise which provides that PAL "shall pay to the Philippine Government during the life of this franchise whichever of subsections (a)

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and (b) hereunder will result in a lower tax", and that the "tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes" in such fiscal or calendar year, where petitioner has a zero corporate income tax liability, as in the fiscal year involved in this case, because of a zero net income for the fiscal years ending March 31, 2001 and March 31, 2002 (*Exhibits "AA-1" and "AA-2"*), it would still be exempted from all other taxes even if does not pay corporate income tax nor the 2% franchise tax based on its gross revenue.

THE COURT'S RULING

The petition is meritorious.

On the Principal Issue

Section 13 of *P.D. 1590 (An Act Granting a New Franchise to Philippine Airlines, Inc. To Establish, Operate, And Maintain Air-Transport Services In the Philippines And Between the Philippines and Other Countries)* provides:

> "**Sec. 13.** In consideration of the franchise and rights hereby granted, the grantee shall pay to the Philippine Government during the life of this franchise whichever of subsections (a) and (b) hereunder will result in a lower tax:
>
> (a) The basic corporate income tax based on the grantee's annual net taxable income computed in accordance with the provisions of the National Internal Revenue Code; or

(b) A franchise tax of two per cent (2%) of the gross revenues derived by the grantee from all sources, without distinction as to transport or nontransport operations; provided, that with respect to international air-transport service, only the gross passenger, mail, and freight revenues from its outgoing flights shall be subject to this tax.

The tax paid by the grantee under either of the above alternatives shall be in lieu of all other taxes, duties, royalties, registration, license, and other fees and charges of any kind, nature, or description, imposed, levied, established, assessed, or collected by any municipal, city, provincial, or national authority or government agency, now or in the future, including but not limited to the following:

1. All taxes, duties, charges, royalties, or fees due on local purchases by the grantee of aviation gas, fuel, and oil, whether refined or in crude form, and whether such taxes, duties, charges, royalties, or fees are directly due from or imposable upon the purchaser or the seller, producer, manufacturer, or importer of said petroleum products but are billed or passed on to the grantee either as part of the price or cost thereof or by mutual agreement or other arrangement; provided, that all such purchases by, sales or deliveries of aviation gas, fuel, and oil to the grantee shall be for exclusive use in its transport and nontransport operations and other activities incidental thereto;

2. All taxes, including compensating taxes, duties, charges, royalties, or fees due on all importations by the grantee of aircraft, engines, equipment, machinery, spare parts, accessories, commissary and catering supplies, aviation gas, fuel, and oil, whether refined or in crude form and other articles,

supplies, or materials; provided, that such articles or supplies or materials are imported for the use of the grantee in its transport and non-transport operations and other activities incidental thereto and are not locally available in reasonable quantity, quality, or price;

3. All taxes on lease rentals, interest, fees, and other charges payable to lessors, whether foreign or domestic, of aircraft, engines, equipment, machinery, spare parts, and other property rented, leased, or chartered by the grantee where the payment of such taxes is assumed by the grantee;

4. All taxes on interest, fees, and other charges on foreign loans obtained and other obligations incurred by the grantee where the payment of such taxes is assumed by the grantee;

5. All taxes, fees, and other charges on the registration, licensing, acquisition, and transfer of aircraft, equipment, motor vehicles, and all other personal and real property of the grantee; and

6. The corporate development tax under Presidential Decree No. 1158-A.

The grantee, shall, however, pay the tax on its real property in conformity with existing law.

For purposes of computing the basic corporate income tax as provided herein, the grantee is authorized:

(a) To depreciate its assets to the extent of not more than twice as fast the normal rate of depreciation; and
(b) To carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss."

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Statutory Construction

The above-quoted *Section 13 of P.D. 1590* defining and limiting the extent of the tax liability of the petitioner under its franchise is coached in a clear, plain and unambiguous manner, and needs no further interpretation or construction. The explicit tenor thereof requires hardly anything than a simple application.

The elementary rule in statutory construction is that if a statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum*. From the words of a statute there should be no departure *(Del Mar vs. Philippine Amusement and Gaming Corp., 358 SCRA 768, 781)*.

Petitioner, therefore, shall pay its tax liability using either of the following alternatives:

a) the basic corporate income tax computed in accordance with the provisions of the NIRC; or

b) 2% franchise tax of the gross revenues derived by the grantee (petitioner) from all sources.

The petitioner-grantee must choose between the two aforementioned alternatives in the payment of its tax liability to the government and its choice must be that which will result in a lower tax liability.

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In the case at bench, the basic corporate income tax liability of petitioner PAL reflected a zero taxable income (NIL) for the fiscal years ending March 31, 2001 and March 31, 2002 (*Exhibits "AA-1" and "AA-2"*). Obviously, zero tax liability is lower than the 2% franchise tax; hence, petitioner chose a better alternative in availing of the basic corporate income tax as basis for its tax liability to the government. A perusal of petitioner PAL's Annual Income Tax Return for fiscal years ending March 31, 2001 and March 31, 2002 (*Exhibits "AA-1" and "AA-2"*) shows that it exercised the option to choose the basic corporate income tax as basis of its tax liability; consequently, it can now claim the exemptions granted to it by its franchise pursuant to the "in lieu of all other taxes" clause of *Section 13 of P.D. 1590.*

"In Lieu of All Other Taxes" Clause

Petitioner may choose to pay either of the two options provided by its franchise whichever will result to a lower tax. Payment, when made, shall be in lieu of all other taxes. The "in lieu of all other taxes" clause of *Section 13* of petitioner's legislative franchise exempts PAL from all taxes necessary in the conduct of its business covered by the franchise, except the tax on its real property for which PAL is expressly made liable.

The "in lieu of all other taxes" proviso in the franchises of numerous grantees has been consistently upheld by no less than the Supreme Court. In the case of *Philippine National Railways vs. Nolting (34 Phil. 401)*, it was held that the "in lieu of" clause in PNR's franchise exempted it from the documentary stamp tax imposed on bills of lading issued by railway companies. PNR's franchise provided that the annual payment for which PNR is liable, when promptly and fully made shall be in lieu of all taxes of every name and nature, municipal, provincial or central, upon its capital stock, franchise, right of way, earnings and all other property owned or operated by the grantee, under this concession or franchise. In upholding PNR's exemption from DST on bill of lading it had issued, the Supreme Court said:

> "The phrase 'all taxes of every name and nature' is a very inclusive statement, especially when it names, in connection therewith, the only government entities who have a right to collect taxes, it not only includes all payments which might be regarded as taxes, but it excludes everything which might by any possibility, be denominated taxes x x x."

Likewise, in the case of *Province of Misamis Oriental vs. Cagayan Electric Power and Light Company, Inc. (181 SCRA 38)*, the Supreme Court upheld the validity and effectivity of the "in lieu of all taxes" provision found in therein petitioner's legislative franchise and held that the franchise was not amended by *P.D. 231* (*Local Tax Code*) which authorized provinces to impose franchise tax on businesses operating in the provinces.

Further, in *Philippine Airlines, Inc. vs. Court of Tax Appeals, et al., CA-G.R. SP No. 69388, November 25, 2003*, the Court of Appeals held:

> "The 'in lieu of all taxes' clause under section 13 of petitioner's legislative franchise, exempts PAL from all taxes necessary in the conduct of its business covered by the franchise, except the tax on its real property for which PAL is expressly made payable.
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> The phrase 'in lieu of means instead of; in place of; or on substitution for (Black v. Barnes, 46 p. 2d 625, 626, 142 Kan. 381; Rutherland vs. Oroville-Wyandotte Irr. Dist., 22 P. 2d 505, 218 Cal. 242; Words and Phrases, Vol. 21, p.472). It does not mean 'in addition to' (Glassman Const. Co. v. Baltimore Brick Co., 246 Md. 478, 228 A. 2d 472, 474, Black's law Dictionary, 6th ed., 1990, p. 787). The 'in lieu of' implies the existence of something for which a substitution is being made. Thus, the 'in lieu of all other taxes' means that none other than the tax specified however described, can be demanded. It limits the liability to the specific tax (State of Tennessee vs. Bank of Commerce, 53 F. 735, 736, Words and Phrases, Vol. 21, p. 474)."

Rationale of the Exemption

The rationale or purpose for the exemption from all other taxes except the income tax and real property tax granted to petitioner PAL upon the payment of the basic corporate income tax or the 2% franchise

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tax is that such exemption is part of the inducement for the acceptance of the franchise and the rendition of public service by the grantee. To repeat, the only qualification provided for in the law is the option given to PAL to choose between the taxes which will yield the lesser liability. Nothing is said about exemption from other taxes if petitioner, choosing the payment of corporate income tax, does not pay income tax at all. If the lawmakers intended to provide for such a condition, then they would have included such a provision. More importantly, if We were to impose the final tax on interest income of bank deposits against petitioner, this would effectively negate the rationale of the law, by stripping PAL of the right given to it by virtue of its franchise to avail of tax incentives, such as the "in lieu of all other taxes" clause.

In the event that petitioner results to a no tax liability upon availing of one of the alternatives given, it should not be held liable for any other tax, except for real property tax. This is the clear intendment of *P.D. 1590* which grants a new franchise to herein petitioner PAL.

To conclude, the final tax on interest income of bank deposit is regarded to belong to "other taxes" as it was not included in the choices provided by the franchise. To hold otherwise would be to give another option to petitioner which is evidently not within the ambit of *P.D. 1590*.

In a similar case entitled *Philippine Airlines Inc., vs. Hon. Court of Tax Appeals*, *(CA-GR. SP. No. 67970, September 30, 2003),* where PAL was also claiming for the refund of 20% final tax on interest on its bank deposits for the period starting March 1995 to February 1997, the Court of Appeals reversed the ruling of this Court in C.T.A. Case No. 5824 and ruled in favor of PAL. Thus:

> "Sec. 13, P.D. No. 1590 defining and limiting the extent of the tax liability of the petitioner under its franchise is couched in a clear, plain and unambiguous manner. The petitioner shall pay its tax liability using either of the following alternatives: (a) the basic corporate income tax computed in accordance with the provisions of the NIRC; or (b) 2% franchise tax of the gross revenues derived by the grantee (petitioner) from all sources. The petitioner shall choose whichever of the two alternatives will result in a lower tax liability. The tax payment made under either of the above alternatives shall be "in lieu of all other taxes, duties . . . "
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> Obviously, the petitioner chose the first alternative, i.e., the basic corporate income tax, in the payment of its tax liability, in the computation of which, the petitioner was authorized under the last paragraph of section 13 of the same law, to depreciate its assets to the extent of not more than twice as fast the normal rate of depreciation, and to carry over as a deduction from taxable income any net loss incurred in any year up to five years following the year of such loss.
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> The evidence shows, however, that after the computation, the petitioner appears to have no corporate income tax liability, which reasonably explains why the petitioner need not pay any corporate tax as there was

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nothing at all to pay because there was in fact no tax due to the government during the taxable year involved, after computations in accordance with the NIRC. Since no tax payment was made, is petitioner required, as contended by the respondent, to pay the 2% franchise tax in order to be exempted from the payment of other taxes such as the 20% final withholding tax on interest income being claimed herein by the petitioner? We believe the law does not say so. The provision of section 13 is explicit and unequivocal. The petitioner-grantee must choose between the two aforementioned alternatives in the payment of its tax liability to the government and its choice must be that which will result in a lower tax liability. Obviously, zero tax liability is lower than the 2% franchise tax; hence, the petitioner chose a better alternative in availing of the basic corporate income tax as basis for its tax liability to the government.

Moreover, the law does not say that to avail of the exemption from payment of all other taxes, there must be, after the computation, a tax due coupled with an "actual" payment thereof. The law simply states that the petitioner-grantee must choose between the two alternatives and such choice must be that whichever will result in a lower tax liability. Any tax paid under either of the two alternatives shall exempt the petitioner-grantee from the payment of the other taxes as the said tax payment is considered by law "in lieu of all other taxes." In this case, as earlier stated, the petitioner availed of the right and privilege granted to it by law by opting to choose the basic corporate income tax as basis for its tax liability, which however, after considering the factors allowed by law, resulted in a zero tax liability. Such zero tax liability as a result of the exercise of its lawful privilege should not be taken against the petitioner nor deprive it of availment of the exemption granted by the law.

We are not unaware that statutes granting tax exemptions are to be strictly construed against the

> taxpayer and liberally in favor of the taxing power. However, such doctrine is not absolute. Where the provision of the law is clear and unambiguous, so that there is no occasion for the court's interpretations of the legislative intent, the law must be taken as it is, devoid of judicial addition or subtraction. For where the law provides no qualification for the granting of tax exemption, the court is not at liberty to supply one."

For all the foregoing, it is evident that petitioner PAL in this instant case could still avail of the exemption granted to it by its franchise even if it did not pay any tax for the fiscal years covering the period where the final tax sought to be refunded for calendar year 2001 accumulated.

On the Issue of Substantiation of Claim

Having definitely disposed of the principal issue in concluding that petitioner PAL is exempted from payment of final withholding taxes on interest on bank deposits by virtue of the "in lieu of all other taxes" clause granted by its franchise, We now proceed to the determination of the substantiation of the claimed amount. Well settled is the rule that failure to show proof of proper documentations and evidence to support its allegations is fatal to one's claim for refund or credit.

In this regard, *Section 14* of *P.D. 1590* provides:

> "**Sec.14.** The grantee shall pay either the franchise tax or the basic corporate income tax on quarterly basis to

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the Commissioner of Internal Revenue. Within sixty (60) days after the end of each of the first three quarters of the taxable calendar or fiscal year, the quarterly franchise or income-tax return shall be filed and payment of either the franchise or income tax shall be made by the grantee.

A final or an adjustment return covering the operation of the grantee for the preceding calendar or fiscal year shall be filed on or before the fifteenth day of the fourth month following the close of the calendar or fiscal year. The amount of the fiscal franchise or income tax to be paid by the grantee shall be the balance of the total franchise or income tax shown in the final or adjustment return after deducting therefrom the total quarterly franchise or income taxes already paid during the preceding first three quarters of the same taxable year.

Any excess of the total quarterly payments over the actual annual franchise of income tax due as shown in the final or adjustment franchise or income-tax return shall either be refunded to the grantee or credited against the grantee's quarterly franchise or income-tax liability for the succeeding taxable year or years at the option of the grantee.

The term "gross revenues" is herein defined as the total gross income earned by the grantee from; (a) transport, nontransport, and other services; (b) earnings realized from investments in money-market placements, bank deposits, investments in shares of stock and other securities, and other investments; (c) total gains net of total losses realized from the disposition of assets and foreign-exchange transactions; and (d) gross income from other sources."

Pursuant to the above-quoted provision of petitioner PAL's franchise, petitioner is required to file at least three (3) quarterly franchise

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or income tax returns and a final or an adjustment return for the purpose of determining its income tax liability. The return will show the option elected by petitioner PAL whether it chose to be taxed under either *Section 13 (a)* or *(b)* of its franchise, whichever is lower.

In the case at bench, after a careful examination of the evidence adduced by petitioner PAL, the Court finds that it has faithfully complied with the aforesaid prescribed requirement. It offered in evidence its Annual Income Tax Returns for the fiscal years ending March 31, 2001 and March 31, 2002 (*Exhibits "AA-1" and "AA-2"*) to prove that petitioner chose, in accordance with its franchise to be taxed under *Section 13 (a) of P.D. 1590*, which is the basic corporate income tax. A perusal of the income tax returns presented reveals that petitioner PAL incurred negative income tax liability (line 25 of *Exhibits "AA-1" and "AA-2"*) because of a zero net income which reasonably explains why the petitioner need not pay as there was actually no tax due to the government for the fiscal years ending March 31, 2001 and March 31, 2002. Logically, negative income tax liability based on the basic corporate income tax is lower than the 2% franchise tax.

Finally, We will now determine whether petitioner has fully substantiated its claim of the total amount of P1,071,375.72 representing

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the total amount of 7 ½ % and 20% final taxes deducted from its interest income from its bank deposits for calendar year 2001.

To prove that petitioner PAL earned interest income on its bank deposits, it offered in evidence the following certifications from the respective banks, to wit:

BANK	PERIOD COVERED	SOURCE	INTEREST INCOME	AMOUNT WITHHELD
International Exchange Bank (IEB)	June 4, 2001	Interest income on dollar time deposits	$46,009.33	$3,450.70
	September 4, 2001		$37,701.36	$2,827.60
(Exhibit "B")	October 4, 2001		$5,522.09	$414.16
Philippine Bank of Communications (PBC)	July 2001	Interest income on dollar placements (7 ½ %)	$4,666.67	$350.00
	August 2001		$11,397.36	$854.35
	September 2001		$13,189.99	$989.25
(Exhibit "C")	December 2001		$13,333.33	$1,000.00
	July 2001	Interest income on peso placements (20%) (premium savings deposit)	P2,700,000.00	P540,000.00

The Court finds credence in the certifications issued by Joy C. Imperio, Service Head of Main Office Center of the International Exchange Bank *(Exhibit "B")* and Carmencita L. Tan, AVP, Branch Manager of Philippine Bank of Communications, Binondo Branch

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(Exhibits "C" & "E"), not only because they were corroborated by other documentary evidences, but because it is of common knowledge that bank transactions are usually treated with strict confidentiality, and as such, once they are divulged in Court, they are, more often than not, considered reliable or believed to be true *(Bobcock-Hitachi (Phils.) Inc., vs. The Commissioner of Internal Revenue, CTA Case No. 4623, November 10, 1995).*

Further, petitioner PAL offered as evidence to prove that the final income taxes withheld from PAL were duly remitted to the Bureau of Internal Revenue the following documents:

> (1) Certificate of Final Income Tax Withheld of PBC for the year 2001 *(Exhibits "D" & "F")* showing the amount of P2,700,000.00 as interest paid to PAL on its premium savings deposit and the amount of P540,000.00 as tax withheld therefrom;
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> (2) the summaries of quarterly final income taxes withheld of PBC for September 2001 *(Exhibits "H" & "L")* and for December 2001 *(Exhibit "J")*, as well as their respective Quarterly Remittance Returns *(Exhibits "I", "K", "M", "W" & "Y")*; and

(3) the Quarterly Remittance Returns of Final Income Taxes Withheld of IEB for the 2nd, 3rd and 4th quarters of 2001 *(Exhibits "Q", "R", and "S")*, as well as their corresponding submarkings, in support of the returns filed with the BIR.

The Court duly admitted the foregoing exhibits without objection from respondent CIR.

After a careful scrutiny of the documentary evidence presented before the Court, We conclude that petitioner PAL has substantially complied with the prescribed evidentiary requirements to prove its claim for refund.

However, We note that there are discrepancies with regard to the conversion rate used by petitioner in its computation of the claimed amount. Petitioner PAL applied the rate of P53.75 to US$1.00 on all its dollar remittances of interest income from bank deposits that resulted in the amount of P1,701,375.72 which should have not been the case. The applied rate of P53.75 has no basis in the evidences presented before the Court. The exchange rate that should have been used in computing the total peso equivalent of the remitted amount is the BSP Exchange Rate indicated on the Remittance Returns (lines 25C and 26C of BIR Form

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No. 1602) by the respective banks that remitted the withheld taxes in question.

Hence, the accurate computation applying the proper exchange rates to all the dollar remittances should have been the following:

BANK	PERIOD COVERED	EXHIBIT	AMOUNT WITHHELD	BSP EXHANGE RATE (₱= $1.00)	PESO EQUIVALENT
IEB	June 4, 2001	"Q"	$3,450.70	P50.58	174,536.406
	Sept. 4, 2001	"R"	$2,827.60	P52.25	147,742.10
	October 4, 2001	"S"	$414.16	P51.38	21,279.54
PBC	July 2001	"I" (3rd Quarter)	$350.00	P51.767	18,118.45
	August 2001		$854.35		44,227.136
	September 2001		$989.25		51,210.50
	December 2001	"K"	$1,000.00	P51.261	51,261.00
	July 2001		P540,000.00		540,000.00

Based on the above conversion table, the total amount converted to Philippine peso from the dollar remittances should have been P508,375.132 and not P531,375.72. Therefore, the total amount refundable by petitioner PAL is only P1,048,375.132.

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On the Issue of Prescription

Lastly, as regards the issue on prescription, We agree with petitioner PAL that it has complied with *Sections 204 (C)* and *229* of the *NIRC of 1997*, which provide as follows:

> "**SEC. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes**. — The Commissioner may —
>
> xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
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> "**SEC. 229. Recovery of tax erroneously or illegally collected**. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

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> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

In this case, the claim for refund involves final taxes collected from the interest income of petitioner starting June 2001 up to December 2001. Since the final taxes collected in June 2001 were paid to the BIR on July 25, 2001*(Exhibit "Q")*, pursuant to *Section 204 (C)* of the *NIRC of 1997*, petitioner had up to July 25, 2003 within which to file a written claim for refund with the respondent Commissioner of Internal Revenue. As admitted by respondent in their Joint Stipulation of Facts and Issues, petitioner filed on November 28, 2002 *(Exhibit "A")*, a written request for refund dated November 19, 2002, of the final taxes amounting to P540,000.00 and US$9,886.06 collected on its interest income from June 2001 up to December 2001, which is well within the prescriptive period.

Similarly, under *Section 229* of the *NIRC of 1997*, petitioner had also until July 25, 2003 to file a suit or proceeding in court for the recovery of the final taxes collected by IEB and PBCom on its interest income. On July 24, 2003 *(Exhibit "G-1")*, or a day before the deadline of

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July 25, 2003, petitioner filed the present Petition for Review *(Exhibit "G")* before this Court.

In fine, as established by the evidence presented, petitioner has complied with the two-year prescriptive period for filing a claim or refund.

In sum, the 7½% and 20% final income taxes erroneously withheld and remitted to the BIR by the International Exchange Bank and Philippine Bank of Communications are hereby summarized as follows:

BANK	Amount Withheld (Peso Equivalent)
International Exchange Bank (IEB)	P 174,536.406 147,742.10 21,279.54
Philippine Bank of Communications (PBC)	18,118.45 44,227.136 51,210.50 51,261.00 540,000.00
TOTAL	P1,048,375.132

WHEREFORE, premises considered, the present Petition For Review is hereby **GRANTED.** Accordingly, respondent Commissioner

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of Internal Revenue is hereby directed to refund to petitioner PAL the reduced amount of P1,048,375.132, representing the 20% and 7½% final income tax withheld by depository banks on petitioner's interest income which were remitted to respondent, or in the alternative, to allow the petitioner a tax credit in the same amount.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice

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